



## **MINUTES**

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
REGULAR MEETING  
10:30 a.m., Wednesday, May 4, 2011  
Human Resources Pinnacle Training Room  
7575 E. Main Street  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
James Butera, Elected Member  
Velicia McMillan, Citizen Member/Merit Head  
Jeffrey Walther, Elected Member

**ABSENT:** Jeffrey Burg, Citizen Member

**STAFF:** Colleen Barraza  
Chanda Washington

**OTHER:** Hanna Auckland, Esq.  
Police Officer John H. Karlik  
Dr. Paul Palmer (via Telephone)  
Dr. Theiler (via Telephone)

### **Call to order**

Chairman Cross called the meeting to order at 10:35 a.m. He stated that the first order of business was the acknowledgement of Board Member Burg's excused absence.

### **Roll call**

A formal roll call confirmed the members present as stated above.

#### **1. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer John H. Karlik**

Ms. Washington reported that Police Officer John H. Karlik was applying for an accidental disability retirement for two injuries that occurred while on duty. She

explained that the neck injury occurred in October 1989 and the foot injury occurred in September 2007.

Ms. Washington elaborated that Police Officer Karlik has experienced difficulties with his both his neck and foot and his doctor has informed him that that he needs additional surgery on his foot.

In response to Chairman Cross' inquiry regarding the Applicant's last day of work, Ms. Washington stated that he is currently on transitional duty.

Chairman Cross confirmed that Board Members received copies of the Applicant's medical history and the IME reports. Ms. Washington noted that both Dr. Theiler and Dr. Palmer would be available by telephone today for questions.

Board Member Walther remarked that he was unable to locate any comments by the Applicant's doctors prior to the IMEs regarding his inability to perform his duties.

Chairman Cross invited the Applicant to come forward and present his case to the Board. Police Officer Karlik was sworn in by Ms. Auckland.

#### **Police Officer Karlik's Presentation**

Chairman Cross inquired whether the Applicant's current doctor believes that he should not return to work as a police officer. Police Officer Karlik stated that the easiest way to respond would be to provide a synopsis of what has occurred to date.

Police Officer Karlik reported that he completed an IME with Dr. McLean through the City and in his report he gave the applicant a 16% whole person impairment in relation to his neck injury. At another IME, Dr. Kelley gave the Applicant an approximate 27% disability regarding his neck injury.

Police Officer Karlik elaborated that Dr. Steen Johnson treated him for his foot injury and he prescribed ositron, cortisone shots, four or five different orthotics, and physical therapy. He stated that since all of these treatments provided no relief for the foot pain he underwent surgery on July 22, 2009.

Police Officer Karlik recalled that after the surgery Dr. Johnson informed him that this was the first case where he had to remove a bone from someone's foot for this type of injury. After the surgery he endured aggressive physical therapy in order to try and return to work and after approximately one full year of physical therapy the City allowed him to obtain an extension.

Police Officer Karlik reported that two months prior to the foot surgery Dr. Marciano performed a spinal fusion surgery on his C-6/C-7 discs wherein the doctor inserted a metal plate and five screws.

He still has no feeling in three of his fingers on his left hand and in January of 2009 Dr. Marciano discussed surgery options with him, although the last two surgeries took a toll on his body.

Police Officer Karlik reported that he saw Dr. Johnson on a monthly basis since 2007 regarding his foot injury. He stated that Dr. Johnson discussed a possible second surgery, noting that the Applicant's condition would not change significantly in the future with his current activity level.

Police Officer Karlik summarized that he was still at a pain level of 6-7, causing him to receive frequent injections for the pain in his neck and shoulders. During a meeting with Ms. Washington and Mr. Fairchild in January of 2011 the Applicant was informed that he would have to retire since he could not receive another transitional duty extension beyond the two years he already received.

### **Board Discussion**

Board Member Walther explained that the Board's votes were based on the information provided in the IME reports, noting that both IME physicians indicate that the Applicant can return to work and both of his injuries are work related.

He was unable to locate any comments by the Applicant's doctors prior to the IMEs stating that he was unable to perform the functions of his duties.

Chairman Cross recalled that both IME physicians received copies of the Applicant's prior medical records. He pointed out that the IME reports reflecting nothing about the Applicant being permanently disabled and unable to return to work.

Ms. Washington explained that HR has only provided the Applicant with a short extension while on transitional duty until the Board votes. She stated that HR would then consider a possible medical separation if the Applicant was unable to perform the full duties of a police officer.

Chairman Cross confirmed that Board Member Walther received a copy of the letter received from Columbia Medical regarding the IME results.

Police Officer Karlik stated that Dr. Johnson has confirmed that his foot injury hinders him from being able to run. He opined that his inability to run as well as his inability to lift anything over his head was definitely a hindrance to being able to perform his job duties as a police officer.

Police Officer Karlik indicated that he was willing to endure one or two more surgeries if necessary to try to get physically fit to return to work.

Chairman Cross explained that although the Applicant is currently unable to perform his duties and has a permanent condition that would not improve over time, the IME physicians believe that he is able to return to work full duty.

Police Officer Karlik expressed his concern that should he return to work a fellow police officer might be injured if he was unable to run to his rescue.

Board Member McMillan pointed out that the Applicant's physicians have not provided anything that challenges the IME results.

Police Officer Karlik stated that he could obtain further documentation from Dr. Johnson supporting the fact that even if he undergoes another foot surgery there was no guarantee that he would not need another surgery to remove scar tissue again.

In response to Board Member Butera's inquiry regarding whether the City physician indicated that the Applicant could not return to work, Ms. Washington responded that he needs another surgery since his foot injury has not improved. The doctor has not addressed whether the Applicant could return to work full duty.

Police Officer Karlik explained that on page 12 of Dr. McLean's report he states that he had failed neck surgery syndrome and chronic axial neck pain. Ms. Washington pointed that out that on page 12 the IME doctor notes that Dr. McLean mentions that the Applicant has 80% pain in his neck and 20% pain in his left arm.

Chairman Cross referenced that under section 2 of page 14 the doctor states that:

"The claimant did have significant pain from his plantar fasciitis of the left lower extremity. This which would almost invariably result in the atrophy of the calf muscle. However, when looking at his lower extremities one cannot discern which extremity is involved."

He elaborated that the doctor believes that the Applicant has not had to stay off of his foot that much since there has not been much of a difference.

Chairman Cross asked whether if the Board denies the disability today based on the IME results and the Applicant goes for more surgery and then three to six months from now he shows no improvement, could he apply for a disability retirement at a later date? Ms. Auckland responded that there was nothing that would preclude the Applicant from applying for a disability retirement in the future, noting that the City would need to allow the Applicant to stay on transitional duty during the additional surgery and treatment.

Discussion ensued regarding the need for the Applicant's two physicians to persuade the two IME physicians to change their minds in order for the reports to correlate.

Police Officer Karlik recalled that he did not enter the DROP until after he completed the two surgeries. He pointed out that his goal all along was to return to full-time duty.

Board Member McMillan inquired whether the second extension had expired. Ms. Washington explained that the second extension was only until the Board votes at today's meeting.

A lengthy discussion ensued regarding the Applicant's only options being returning to work full-time or the City medically separating him because he has been on transitional duty too long.

Police Officer Karlik pointed that the prior IME physicians and his surgeon, Dr. Marciano, told him not to lift anything over 30 pounds.

Ms. Auckland reminded the Board members that the Dr. Palmer and Dr. Theiler were available for questioning. Board Member Butera expressed his interest in asking the

IME doctors whether Police Officer Karlik could run even though running was not listed in the police officer job classification.

Police Officer Karlik expressed concern that his physical pain and lack of feeling in his hand and shooting finger would affect his ability to handle firearms.

Discussion ensued as to whether an option would be for the Board to send the Applicant for a third IME exam giving Police Officer Karlik's doctors time to submit additional information. Board Member Butera suggested giving the doctors a copy of the IME questions.

Chairman Cross requested that staff call Dr. Theiler at Columbia Medical. Dr. Theiler was sworn in by Ms. Auckland.

### **Dr. Theiler Questioning**

Board Member Walther inquired whether Police Officer Karlik was able to run, pursue suspects on foot, and defend himself should he be involved in a physical altercation without further injury to the plate in his neck.

Dr. Theiler recalled that the IME panel consisted of himself and Dr. Paul Palmer and after they reviewed the essential job duties of a police officer supplied by staff they opined that the Applicant does have a cervical fusion. The only restriction resulting from his neck injury would be his inability to lift or drag 160 pounds. He stated that there were no counter-indications of being released to full work activity at this time.

Dr. Theiler stated that all of the Applicant's complaints regarding his foot appeared to be subjective, noting that it was unusual that none of the treatment modalities appeared to help and despite the chronicity of the symptoms there was no significant atrophy of his lower extremity, which was also unusual.

He discussed the fact that injury affected the plantar fascia and the Applicant's complaints were subjective. He was not at increased risk to injure himself or cause any further problems, even if he experienced some chronic pain in that area.

Board Member McMillan stated that according to the job description a police officer must "be able to pursue offenders on foot, stop and subdue resisting offenders using necessary force where appropriate, including deadly force."

She inquired whether the plate in the Applicant's neck along with his foot fusion hinders him from completing these tasks while on duty. Dr. Theiler responded that his inability to lift 160 pounds would hinder the Applicant from dragging a body. The Applicant would be at increased risk in an altercation with an offender who outweighs him.

Dr. Theiler explained that ancillary cervical fusion generally does not result in any significant restrictions and the Applicant was at increased risk for future gradual degenerative changes above and below the fusion.

He stated that although the Applicant's plantar fasciitis causes his complaints of pain and an inability to run, there were no findings based on the exam performed that indicate any

significant weaknesses or atrophy of the lower extremities to substantiate the subjective complaints.

In response to Board Member Butera's inquiry regarding whether the doctor agreed with Dr. McClean's diagnosis that Police Officer Karlik suffered from a failed neck surgery syndrome, Dr. Theiler stated that the question was more related to Dr. Palmer's field of expertise.

He recalled their discussion of the fact that although the subject has persistent subjective complaints status post fusion, the actual fusion surgery itself was very successful.

In response to Police Officer Karlik's inquiry as to why the doctor disagrees with the prior physicians' findings, Dr. Theiler explained that the nature of an IME exam is to give an opinion regarding the injuries and treatment performed. His IME report was only his opinion as an orthopedic surgeon based on how an orthopedic diagnosis was treated with various modalities.

In response to Police Officer Karlik's inquiry regarding the effects of the bone being removed from his foot, Dr. Theiler confirmed that the removal of the calcaneal spur does not affect the function of the foot. Police Officer Karlik recalled that Dr. Johnson opined that the loss of the extra bone affected his ability to run.

In response to Board Member Butera's inquiry regarding whether Police Officer Karlik had a percentage of disability, Dr. Theiler responded that although there was an automatic impairment associated with an ante cervical fusion a restriction is not always associated with it.

Dr. Theiler explained that as a result of the IME exam they found that the plantar fasciitis has no atrophy, a full range of motion, and subjective complaints. He pointed out that there was really no impairments found based on AMA guidelines. Chairman Cross confirmed that there were no further questions for the doctor.

Police Officer Karlik pointed out that he did receive an impairment rating of 4% from Dr. Johnson and he also recalled that Dr. Kelley stated that his AMA impairment would be approximately 27%.

Ms. Auckland explained that a police officer with a 2% impairment resulting from the loss of the top of their trigger finger would not prohibit them from most activities, but it would definitely prohibit them from accomplishing their job duties, if regularly required to use a handgun.

### **Discussion**

Board Member Butera discussed the fact that the physical demands and work characteristics described in the police officer job description are representative of those that must be met by an employee. He recalled that Dr. Theiler stated it was questionable whether the Applicant could lift and move 160 pounds, even though the job description says that duty must be met to successfully perform the essential functions.

Board Member Butera stated that the job description also requires that "reasonable accommodations may be made to enable individuals with disability to perform the essential functions." He inquired whether the City was required to place the Applicant in a position that allows him to do everything but drag a body.

Board Member Walther recalled that Dr. Theiler stated that "his injury would not prevent him from lifting or dragging 160 pounds." He stated that it is unclear whether the Applicant could accomplish that task by himself.

In response to Ms. Washington's inquiry regarding whether the Board would like to talk to Dr. Palmer at noon, Chairman Cross stated that there was no need to call Dr. Palmer, since most of Dr. Theiler's answers indicated that they were in unison.

Police Officer Karlik expressed interest in questioning Dr. Palmer about his prior IMEs with the doctor. It was the consensus of the Board not to call Dr. Palmer.

**BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT DOES NOT HAVE A PHYSICAL OR MENTAL CONDITION WHICH TOTALLY AND PERMANENTLY PREVENTS HIM FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE POLICE OFFICER CLASSIFICATION. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ONE (1). BOARD MEMBER BUTERA DISSENTED. BOARD MEMBER BURG WAS ABSENT.**

**BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT'S DISABLING CONDITION WAS INCURRED IN THE PERFORMANCE OF HIS DUTIES AS A POLICE OFFICER. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**BOARD MEMBER WALTHER MOVED TO FIND THAT THE APPLICANT'S DISABILITY DID NOT RESULT FROM A PHYSICAL OR MENTAL CONDITION OR INJURY THAT EXISTED OR OCCURRED PRIOR TO THE APPLICANT'S DATE OF MEMBERSHIP IN PSPRS, WHICH IS DECEMBER 8, 1986. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**BOARD MEMBER WALTHER MOVED TO DISAPPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION OF POLICE OFFICER JOHN H. KARLIK SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ONE (1). BOARD MEMBER BUTERA DISSENTED. BOARD MEMBER BURG WAS ABSENT.**

Discussion ensued regarding the Board's frustration with the conflicting IME results in addition to Dr. Theiler's confirmation of his findings. Board Member Walther reminded the applicant that he could appeal their decision at a future date.

**CLOSED PUBLIC HEARING**

2. **Motion to Recess into Executive Session for Discussion of the A.R.S. Sec. 38-844 Retirement Application of Police Officer John H. Karlik**

Chairman Cross deemed it unnecessary to recess into Executive Session to discuss the retirement application of Police Officer Karlik.

**RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION**

3. **Discussion request made by Police Lieutenant Michael R. Anderson to defer his previously approved DROP (Deferred Retirement Option Plan) application.**

Chairman Cross suggested that the Board adjourn into Executive Session to discuss Police Lieutenant Michael R. Anderson's request to defer his previously approved DROP application.

**CLOSED PUBLIC HEARING**

4. **Motion to Recess into Executive Session to discuss request made by Police Lieutenant Michael R. Anderson to defer his previously approved DROP application.**

**BOARD MEMBER WALTHER MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF POLICE LIEUTENANT MICHAEL R. ANDERSON'S REQUEST TO DEFER HIS PREVIOUSLY APPROVED DROP APPLICATION. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION**

3. **Discussion request made by Police Lieutenant Michael R. Anderson to defer his previously approved DROP (Deferred Retirement Option Plan) application (continued).**

Ms. Washington reported that Police Lieutenant Michael R. Anderson previously submitted his DROP application for review by the Board. She stated that after the Board's meeting the Applicant informed staff that he wanted to rescind his option to enter into the DROP.

Ms. Washington explained that the City does not sign off on the Applicant's paperwork until after receiving the marked agenda and draft meeting minutes. As of today the City of Scottsdale has not signed off on the Applicant's paperwork to enter the DROP.

Board Member McMillan stated that since the application had not yet been signed and not fully approved, the City was willing to pull Police Lieutenant Anderson's application as it is considered to be incomplete.

**BOARD MEMBER MCMILLAN MOVED TO APPROVE POLICE LIEUTENANT MICHAEL R. ANDERSON'S REQUEST TO DEFER HIS PREVIOUSLY APPROVED DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**5. Board Suggestions for Upcoming Agenda Items**

Board Member Butera inquired whether the Board should have provided the doctors with a copy of the 1986 police officer job requirements since Police Officer Karlik was hired in 1986, Chairman Cross confirmed that the Board must consider whether he was able to perform today's police officer job requirements.

Ms. Washington confirmed that staff always provides the IME physicians with a copy of the results of the Applicant's physical taken at the time of hire.

**ADJOURNMENT**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:47 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Police Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee